



FH

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KOP/170193

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 16, 2015, under , to review a decision by the Professional Services Group - PSG in regard to Kinship Care, a telephonic hearing was held on December 17, 2015, at Milwaukee, Wisconsin. The record was held open post-hearing for 5 days to allow the parties to submit additional information, which was received.

The issue for determination is whether the petitioner was overpaid \$464 in Kinship Care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED] Program Mgr. for Kinship  
Professional Services Group - PSG  
1126 S 70th Street  
Suite N 200  
West Allis, WI 53214

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. The petitioner was issued \$232 in Kinship payments for January – July 2015 for [REDACTED].

3. From January – July 2015 ■■■ was incarcerated. He was incarcerated for the partial months of January and July 2015.
4. On September 1, 2015 petitioner reported to the Kinship agency that ■■■ was incarcerated.
5. On November 3, 2015 the Kinship agency issued a notice to petitioner stating that it found an overpayment of Kinship payments made to petitioner in the amount of \$464.

### **DISCUSSION**

The Kinship Care benefit is a public assistance payment of \$232 per month (in 2015) per child paid to a qualified relative who bears no legal responsibility to support the child. To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6); see also, Wis. Admin. Code Ch. 58.

In the instant case, the local Kinship Care agency determined that the petitioner was overpaid Kinship benefits for the child, ■■■, and the agency seeks recovery of that overpayment because he was incarcerated from approximately mid-January to mid-July 2015. The Wisconsin Division of Hearings and Appeals has jurisdiction to consider appeals from Kinship Care overpayment determinations pursuant to Wis. Admin. Code Ch. DHS 2.

In the case before me, petitioner admitted that ■■■ was incarcerated during the timeframe in question but that she was sending his mother some of his Kinship funds and that she was saving a portion for his eventual release. There was no allegation of fraudulent conduct made against the petitioner; however, I do conclude that she was overpaid Kinship benefits for the time ■■■ was out of her care. This would actually be for the months of February – June 2015 (January and July are not overpayment months as he was in her care for at least parts of those months). However, the agency agreed to compromise on the overpayment and only seeks repayment for 2 of those months, not the entire 5 months it could have sought overpayment. I will not disturb that compromise. One of the basic tenets of Kinship is that in order to be eligible to receive the benefit the kinship care relative must be providing care and maintenance for a child at risk. See Wis. Stat. §48.57(3m)(am). If ■■■ was not living with her, she was not providing care and she would no longer be eligible for Kinship benefits. Based on the foregoing, I conclude that the Department may proceed with its recovery efforts if petitioner does not promptly sign a repayment agreement with the Department.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable or "fairness" arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

1. The petitioner was overpaid \$464 in Kinship Care benefits.
2. The Department may appropriately seek recovery of the \$464 overpayment.

**THEREFORE, it is**

**ORDERED**

That the petition herein be dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 8th day of March, 2016

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 8, 2016.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care